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RICHARD H. WEARE, CLERK
U.S. DISTRICT COURT
DISTRICT OF ARIZONA

STEPHEN M. McNAMEE
United States Attorney
District of Arizona

FILED

JAN 4 1990

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RICHARD H. WEARE, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY *[Signature]*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff,

v.

DAVID KIPNIS, et ux., et al.
Defendants.

No. CIV. 87-650 TUC RMB

Yes
86105
Chrome
Custom plating

PARTIAL CONSENT DECREE

WHEREAS, the United States of America, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), has filed a complaint ("the complaint") herein against defendants David and Dorothy Kipnis and Harry and Rose Fake, pursuant to Section 107(a) of the Comprehensive, Environmental Response,

Jorgenson
Dworkin
Mandig
Baker

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1 Compensation, and Liability Act of 1980 ("CERCLA"), as amended,
2 42 U.S.C. § 9607(a), for recovery of the costs incurred by the
3 United States in responding to the alleged release and threatened
4 release of hazardous substances at the Chrome Company site,
5 located at 415 East Grant Road, Tucson, Arizona; and

6 WHEREAS, the Kipnis Defendants filed an answer to the
7 complaint, denying liability; and

8 WHEREAS, the United States and the Kipnis Defendants agree
9 that settlement of the dispute between them herein without costly
10 and protracted litigation is in the public interest; and

11 WHEREAS, the Kipnis Defendants, by and through their
12 representatives, have each agreed to the execution of this
13 partial Consent Decree in final settlement of the claims against
14 the Kipnis Defendants alleged by the United States in the
15 complaint;

16 NOW THEREFORE, without trial, adjudication or admission of
17 any issue of law, fact, or responsibility by Dorothy Kipnis
18 individually, or as the personal representative of the Estate of
19 David Kipnis, it is hereby ORDERED, ADJUDGED, and DECREED as
20 follows:

21 I. DEFINITIONS

22 The following definitions shall apply to this Decree:

23 A. The "Chrome Company site" is the parcel of land on which
24 EPA's response action took place, and is located at 415 East
25 Grant Road, at the corner of Grant Road and Geronimo Avenue, Pima
26 County, Tucson, Arizona.

1 B. "CERCLA" means the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et
3 seq., as amended by the Superfund Amendments and Reauthorization
4 Act of 1986, Public Law 99-499.

5 C. "The Kipnis Defendants" refers to Dorothy Kipnis
6 individually and the Estate of David Kipnis.

7 D. The "Effective Date" of this Decree shall be the date
8 upon which it is signed collectively by the United States and the
9 Kipnis Defendants.

10 E. The date of "Entry" of this Decree shall be the date it
11 is signed by the Court.

12 F. The term "days" shall mean calendar days.

13 G. Terms not otherwise defined herein shall have their
14 ordinary meaning unless defined in Section 101 of CERCLA, 42
15 U.S.C. § 9601, or in the National Contingency Plan ("NCP"), 40
16 C.F.R. Part 300, in which case, the definition in CERCLA or the
17 NCP shall control.

18 II. JURISDICTION

19 The parties agree that this Court has jurisdiction over the
20 subject matter of this action and has personal jurisdiction over
21 the Kipnis Defendants pursuant to 42 U.S.C. § 9613(b) and 28
22 U.S.C. §§ 1345 and 2201. Defendants waive any objection they may
23 have to venue in this Court. For purposes of entering and
24 enforcing the provisions of this partial Consent Decree, the
25 complaint states a claim upon which relief can be granted.
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III. PARTIES BOUND

This partial Consent Decree shall be binding upon the United States on behalf of EPA, and upon the Kipnis Defendants, their heirs, agents, successors in interest and assignees. Dorothy Kipnis certifies that she is fully authorized to enter into this partial Consent Decree and to execute and bind legally the Kipnis Defendants. The undersigned representatives of the United States certify that they are collectively authorized to enter into this partial Consent Decree and to execute and bind legally the United States.

IV. REIMBURSEMENT FOR RESPONSE COSTS

Within thirty (30) days of Entry of this Decree, the Kipnis Defendants shall pay a total of \$212,000.00 (Two Hundred and Twelve Thousand Dollars) to the United States for reimbursement of the response costs incurred by the United States with respect to the Chrome Company site up to and including the effective date of this decree. This amount shall be made payable by certified or cashier's check to the "EPA Hazardous Substance Superfund" and shall be remitted to EPA Region IX, Attention: Superfund Accounting, P.O. Box 360863M, Pittsburgh, Pa 15251. The transmittal of such payment shall reference the Chrome Company site, and shall be accompanied by correspondence containing the following identifying information: United States v. David Kipnis, et al, DOJ Ref. No. 90-11-3-225, Civil Action No. 87-650 TUC ACM, and the name and complete address of the paying party. The Kipnis Defendants shall send copies of this correspondence to

1 Allyn Stern, Office of Regional Counsel (RC-5) Region 9, U.S.
2 Environmental Protection Agency, 215 Fremont Street, San
3 Francisco, CA 94105 and to Karen Dworkin, Department of Justice,
4 P.O. Box 7611 Ben Franklin Station, Washington, D.C. 20044, when
5 payment is made.

6 In the event the Kipnis Defendants fail to timely make
7 payment as required above, then without further order of the
8 Court, this Decree shall be considered an enforceable judgment
9 for purposes of post-judgment collection in accordance with Rule
10 69 of the Federal Rules of Civil Procedure, and other applicable
11 federal authority. The Kipnis Defendants shall be liable to the
12 United States for interest on the amount owed from the date
13 payment is due pursuant to Section IV. of this partial Consent
14 Decree until the entire sum is collected. The rate of interest
15 shall be the same rate and calculated in the same manner as is
16 set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The
17 Kipnis Defendants agree to pay to the United States any and all
18 costs incurred by the United States in collecting any and all
19 amounts in default hereunder.

20 Nothing herein shall be construed to limit the authority of
21 the United States to seek such other relief, in law or in equity,
22 available to it for the Kipnis Defendants' violation of this
23 partial Consent Decree, and the United States expressly reserves
24 all such remedies available to it to enforce the provisions of
25 this partial Consent Decree.

1 The Kipnis Defendants shall bear their own costs and
2 attorneys fees in this matter.

3 V. EFFECT OF PARTIAL CONSENT DECREE

4 A. Upon receipt of the payment set forth in Paragraph IV
5 above, the United States agrees to dismiss with prejudice all
6 claims in this action against the Kipnis Defendants and agrees
7 that the Kipnis Defendants shall be deemed to have fully and
8 completely satisfied the requirements of this partial Consent
9 Decree.

10 B. Nothing in Paragraph V.A. or in this partial Consent
11 Decree shall release any Defendant from liability for response
12 costs, if any, incurred by the United States or by any other
13 Defendant after the Effective Date of this Decree.

14 C. This partial Consent Decree shall not bind any person or
15 legal entity other than the United States, and the Kipnis
16 Defendants and their heirs, agents, assignees and successors in
17 interest.

18 D. The Kipnis Defendants hereby agree not to sue the United
19 States for any liability for action taken and expenditures made
20 by the United States, its agents and employees prior to the
21 Effective Date of this Decree in responding to the alleged
22 release or threatened release of hazardous substances into the
23 environment from the Chrome Company site. Further, the Kipnis
24 Defendants agree not to assert any causes of action, claims, or
25 demands against the United States for reimbursement from the
26 Hazardous Substance Response Trust Fund established by 26 U.S.C.

1 § 9507, including claims pursuant to Sections 106(b)(2), 111 and
2 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or assert
3 any other claims or demands for sums paid in settlement of
4 response costs or arising from any activity performed or expenses
5 incurred pursuant to this litigation or under this partial
6 Consent Decree or arising from response activities at the site,
7 prior to the effective date of this consent decree.

8 E. Nothing in this partial Consent Decree shall be deemed
9 to constitute preauthorization of a CERCLA action within the
10 meaning of 40 C.F.R. § 300.25(d).

11 F. Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C.
12 § 9613(f)(2), as amended by the Superfund Amendments and
13 Reauthorization Act of 1986, upon compliance with the terms of
14 this Decree, the Kipnis Defendants will have resolved their
15 liability to the United States for Response Costs incurred prior
16 to the Effective Date of this Decree and the Kipnis Defendants
17 shall not be liable for claims for contribution regarding matters
18 addressed in this partial Consent Decree.

19 G. Except as provided in this partial Consent Decree, this
20 partial Consent Decree shall not be construed to preclude or
21 limit, in any subsequent action other than enforcement of this
22 Decree, the right of the Kipnis Defendants to assert any defense
23 available to the Kipnis Defendants, or to assert any claim or
24 cause of action against any person not a party to this partial
25 Consent Decree to which the Kipnis Defendants may be entitled.

VI. RESERVATION OF RIGHTS

Except as provided in Paragraph V. of this Decree, the United States reserves all claims, demands, and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any other person or entity, including the Kipnis Defendants. Nothing contained herein, except as provided in Paragraph V.A., of this Decree shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against the Kipnis Defendants or against any other person or entity not a party to this Decree under Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607. Any claim, cause of action or defense which the United States or the Kipnis Defendants may have against any other person or entity not a party to this Decree, including but not limited to, claims for indemnity or contribution, is expressly reserved.

Except as expressly provided in Paragraph V., nothing contained in this Decree shall be construed to limit the right of the United States to take judicial or administrative action to enforce federal or state environmental laws or this partial Consent Decree.

VII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter to enforce the terms and conditions of this partial Consent Decree.

VIII. NOTICE TO PARTIES

Any notice required under this partial Consent Decree shall be sent by registered mail to the Kipnis defendants at the address set forth on its signature page attached hereto. Notice to EPA and the Department of Justice shall be by registered mail and shall be to the addresses listed in Paragraph IV. above.

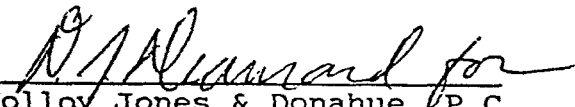
IX. MODIFICATION

No modification shall be made to this partial Consent Decree without written notification to and written approval of the parties hereto and the Court. The notification required by this paragraph shall set forth the nature of and the reasons for the requested modifications. No oral modification of this partial Consent Decree shall be effective.

X. ADMISSION OF FAULT

The United States and the Kipnis Defendants agree that the actions undertaken by the Kipnis Defendants in accordance with this partial Consent Decree do not constitute an admission of any fault or liability by the Kipnis Defendants, nor do they constitute an admission that the Kipnis Defendants have violated the provisions of any law, including Federal, state and local laws.

FOR THE KIPNIS DEFENDANTS:


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2 FOR THE PLAINTIFF:
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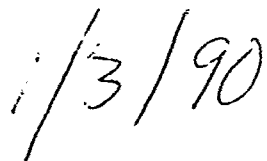
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19 Environmental Enforcement Section
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22 Ben Franklin Station
23 Washington, D.C. 20044
24 (202) 633-2778

25 IT IS SO ORDERED, ADJUDGED AND DECREED

26 DATED: 


UNITED STATES DISTRICT JUDGE
DISTRICT OF ARIZONA